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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,956	10/01/2003	Suzanne Zebedee	323-100US D	9260

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EXAMINER	
LUCAS, ZACHARIAH	
ART UNIT	**PAPER NUMBER**
1648	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/677,956	**Applicant(s)** ZEBEDEE ET AL.	
	Examiner Zachariah Lucas	**Art Unit** 1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *140 and 142*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *141,143,144,146 and 147*.
   Claim(s) withdrawn from consideration: *145*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). October 19 and of No
13. ☐ Other: _____.

/Z. Lucas/
Patent Examiner, AU 1648

Continuation of 5. Applicant's reply has overcome the following rejection(s): the rejections under 35 U.S.C. sections 112, and 102, and the 103 rejection over Wang et al.

Continuation of 11. does NOT place the application in condition for allowance because: Claims 124-126, 129-131, 138, 141, 143, 144, 146, and 147 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houghton et al., (U.S. 5,350,671). Claims 124-126, 129-131, and 138 have been cancelled from the application. The rejection is therefore withdrawn from these claims. The rejection is maintained over claims 141, 143, 144, 146, and 147.

The Applicant continues to argue that the teachings of the reference do not teach or suggest the claimed invention. In specific, the Applicant asserts that the teachings of Houghton do not provide motivation to combine their method of detecting HCV antibodies using a core sequence with the use of a C-100-3 protein. As was previously indicated, the reference teaches the use of both the C-100-3 antigen and the core antigen for the detection of anti-HCV antibodies. It would therefore have been obvious to those of ordinary skill in the art to combine these antigens, useful for the same purpose, in a combined method for the detection of HCV antibodies in a sample. Further, as the Applicant admitted in the Helting declaration, and was noted in the prior action, the C-100-3 assay was used in the art for the diagnosis of HCV infection, and it was known in the art that the use of C-100-3 antigen alone did not detect all cases of HCV infection. Thus, those of ordinary skill in the art would have had motivation to combine the use of the capsid antigens as suggested by Houghton with the use of the known C-100-3 antigens.

The Applicant also continues to assert that the reference fails to teach the problem of early detection. However, while this may have been the problem at issue in the present application, the basis for finding an invention obvious need not rely on the same motivation or rational for the modification of the prior art as the Applicant. See e.g., MPEP § 2144. Moreover, if there is any unexpected result to be seen, it is not from the combination of the two antigens, but is from the use of the core antigens themselves - to which the Applicant attributes the ability to detect HCV infection at early times. However, as Houghton teaches the use of this antigen for the same purpose, this "unexpected result" is, as was indicated in the prior action, merely an unrecognized advantage of the use of the core protein. Because those of ordinary skill in the art would have been motivated to use the combination of the two antigens for the detection of HCV antibodies, and as the benefits of the claimed invention would naturally flow from the combination of the core protein with any HCV antigen, the reference renders the claimed invention obvious.

The arguments in traversal are therefore not found persuasive for the reasons above and the reasons of record.